



House of Representatives

File No. 547

General Assembly

February Session, 2010

(Reprint of File No. 100)

Substitute House Bill No. 5204
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 14, 2010

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE JOINT ENFORCEMENT COMMISSION ON EMPLOYEE MISCLASSIFICATION.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 31-69a of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2010*):

4 (a) In addition to the penalties provided in this chapter and chapter
5 568, any employer, officer, agent or other person who violates any
6 provision of this chapter, chapter 563a, chapter 557 or subsection (g) of
7 section 31-288, as amended by this act, shall be liable to the Labor
8 Department for a civil penalty of three hundred dollars for each
9 violation of said chapters and for each violation of subsection (g) of
10 section 31-288, as amended by this act, except that (1) any person who
11 violates [(1)] (A) a stop work order issued pursuant to subsection (c) of
12 section 31-76a, shall be liable to the Labor Department for a civil
13 penalty of one thousand dollars and each day of such violation shall
14 constitute a separate offense, and [(2)] (B) any provision of section 31-
15 12, 31-13 or 31-14, subsection (a) of section 31-15 or section 31-18, 31-23

16 or 31-24 shall be liable to the Labor Department for a civil penalty of
17 six hundred dollars for each violation of said sections, and (2) a
18 violation of subsection (g) of section 31-288, as amended by this act,
19 shall constitute a separate offense for each day of such violation.

20 (b) The Attorney General, upon complaint of the Labor
21 Commissioner, shall institute civil actions to recover the penalties
22 provided for under subsection (a) of this section. Any amount
23 recovered shall be deposited in the General Fund and credited to a
24 separate nonlapsing appropriation to the Labor Department, for other
25 current expenses, and may be used by the Labor Department to
26 enforce the provisions of chapter 557, chapter 563a, this chapter and
27 subsection (g) of section 31-288, as amended by this act, and to
28 implement the provisions of section 31-4.

29 Sec. 2. Subsection (g) of section 31-288 of the general statutes is
30 repealed and the following is substituted in lieu thereof (*Effective*
31 *October 1, 2010*):

32 (g) Any employer who (1) has failed to meet the requirements of
33 subsection (b) or (c) of section 31-284, or (2) with the intent to injure,
34 defraud or deceive any insurance company insuring the liability of
35 such employer under this chapter or the state of Connecticut because
36 of failure to pay workers' compensation assessments in accordance
37 with the provisions of section 31-345 or Second Injury Fund
38 assessments in accordance with the provisions of section 31-354, (A)
39 knowingly misrepresents one or more employees as independent
40 contractors, or (B) knowingly provides false, incomplete or misleading
41 information to such company concerning the number of employees, for
42 the purpose of paying a lower premium on a policy obtained from
43 such company, shall be guilty of a class D felony and shall be subject to
44 a stop work order issued by the Labor Commissioner in accordance
45 with section 31-76a.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2010</i>	31-69a
Sec. 2	<i>October 1, 2010</i>	31-288(g)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Labor Dept.	SF - Potential Revenue Gain	Significant	Significant

Note: SF=Special Fund (Non-appropriated)

Municipal Impact: None

Explanation

The bill increases the civil penalty to employers engaging in employee misclassification and misrepresentation. This results in a potential significant¹ revenue gain to the non-appropriated account within the Department of Labor (DOL) set up to receive such funds.

Under current law, employers engaging in employee misclassification or misrepresentation are liable for a single \$300 civil penalty; the bill increases the penalty by providing that each day of the violation constitutes a separate offense. It is estimated that approximately 150 to 175 violations per annum would be subject to the expansion of the civil penalty under the bill, a significant portion of which would occur over multiple days. To the extent that the violations do occur over multiple days, there is a significant revenue gain.

House "A" clarifies that the increase in the civil penalty contained in the bill is limited to incidents of employee misclassification or misrepresentation only, and does not apply to other offenses in state wage, employment regulation, personnel files, or other workers'

¹ The Office of Fiscal Analysis defines "significant" as any amount in excess of \$100,000 for the purposes of fiscal notes.

compensation law. This results in a significant reduction to the potential revenue gain identified in the fiscal note on the original bill.

The Out Years

The annualized revenue gain from fines would remain constant into the future as fine amounts are set by statute.

Sources: Division of Wage and Workplace Standards statistics

OLR Bill Analysis**sHB 5204 (as amended by House "A")******AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
JOINT ENFORCEMENT COMMISSION ON EMPLOYEE
MISCLASSIFICATION.*****SUMMARY:**

By law, any employer who misrepresents either the number of its employees or casts them as independent contractors to defraud or deceive an insurance company in order to pay lower workers' compensation insurance is (1) guilty of a class D felony and (2) subject to a stop work order. Under the bill, the same penalty applies if the employer defrauds or deceives the state in the same way.

The bill also increases the penalty for this violation by specifying that each day of the violation constitutes a separate offense. Violators are liable to the Labor Department for a \$300 civil penalty.

The bill specifies that any employer who is fully insured for workers' compensation and fails to pay the required state assessments for (1) the administration of the Workers' Compensation Commission and (2) the administration and payment fund of the Second Injury Fund is guilty of a class D felony and subject to a stop work order. By law, a self-insured employer who fails to make the same assessments is already subject to these penalties.

*House Amendment "A" specifies that each day of defrauding or deceiving the state regarding misrepresentation for workers' compensation purposes constitutes a separate offense but the separate offense provision does not apply to other offenses, in state wage, employment regulation, personnel files, or other workers compensation law.

EFFECTIVE DATE: October 1, 2010

BACKGROUND***Second Injury Fund (SIF)***

The SIF is a state-run, employer-funded program to provide workers' compensation to employees whose employers did not provide workers' compensation. It is administered by the state treasurer.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 10 Nay 0 (03/09/2010)

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (04/07/2010)